

Abortion Bill Skips the Fine Print

By Warren M. Hern

BOULDER, Colo.

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Warren M. Hern, a physician, is Director of the Boulder Abortion Clinic

As I watched the Senate debate on late-term abortions this week, I was struck by the surreal quality of the remarks. The oratory from both sides had nothing to do with the anguish faced by my patients and their families, yet the results will profoundly affect their lives.

Families sometimes ask me to do things that might be illegal if the bill the Senate passed on Wednesday or anything like it ever becomes law. The bill's sponsors say it would only ban a procedure that abortion foes call "partial birth" abortion, in which a living fetus is partially delivered and its skull collapsed so it can be delivered intact. But the legislation is so vaguely worded that doctors have little idea of what would really be banned under it.

It is true that the Senate does not have the votes to override a likely Presidential veto. But the foes of abortion will keep sponsoring legislation that keeps doctors guessing about what they are allowed to do.

Many families that come to me for late-term abortions -- after 24 to 26 weeks of pregnancy or later -- want the fetus to be delivered intact. I never make a guarantee; my first objective is to make the procedure as safe as possible for the woman. But having the fetus delivered intact is safer at some stages of pregnancy than performing an abortion with forceps and dismembering the fetus in the womb. And sometimes there are other reasons to keep the fetus intact.

A couple came to me recently in despair. The woman's fetus was missing both arms and most of one leg and had other deformities indicating that if it were born alive at term it would be severely impaired, physically and mentally, and would likely never gain consciousness. The woman and her husband wanted the fetus to be delivered intact. I was able to do so.

After the abortion, my staff and I wrapped the fetus in a baby blanket and presented it to the couple. It was now their stillborn baby. The woman gently and lovingly stroked it with her fingers. She wept a little. Her husband held his head in his hands and was silent. After five or 10 minutes, she folded the blanket and covered her baby, and I took it away.

If the bill to ban "partial birth" abortion were to become law, could I be prosecuted in a case like this? Absolutely. Could I be convicted? I don't think so, but I don't know. One reason is that the term "partial birth" abortion does not occur anywhere in medical literature -- the Senate wants to ban a procedure that doctors don't think exists.

One might also think I would be safe because the fetus was already dead when I delivered it. But the legislation is so vague that there is no way to find out except to see if the sheriff arrested me. If I were nervous about being arrested, I would be better off not performing any late-term abortions at all.

That, of course, is the intent of the bill: to keep doctors from performing *any* abortion. All the various Congressional proposals to ban "partial birth" abortion have shared this

unconstitutional vagueness. "This legislation leaves doctors unable to determine whether the medical care they are providing is a criminal act," says Janet Benshoof, president of the Center for Reproductive Law and Policy. "Moreover, it prohibits second trimester abortion in violation of the Supreme Court's guarantee that women can make these private choices free of governmental interference."

But one part of the bill is not vague: It makes no distinction between second trimester abortions and those performed after the fetus is viable. "Partial birth" abortions would be banned even when the woman's health is jeopardized and when there is a serious fetal abnormality.

The American Medical Association's support of the bill -- after the sponsors made a few "compromises" in language intended to better protect doctors from criminal prosecution -- was misguided and cynical. The bill, as amended, protects only doctors who are performing complicated term deliveries; the A.M.A.'s sham protections would leave doctors who perform abortions vulnerable to prosecution. That's why the American College of Obstetricians and Gynecologists still opposes it.

President Clinton is right to object to this dangerous measure. And he would do well to be suspicious of all such attempts to limit late-term abortion -- even those "compromise" proposals from legislators who claim to support abortion rights.